(whole hand or foot) shall receive, etc.," the loss of about one-fourth of the foot did not entitle the insured to recover under the provision. *Fuller* v. *Locomotive, etc., Ass'n*, 122 Mich. 548, 81 N. W. 326, 80 Am. St. Rep. 598, 48 L. R. A. 86.

The decision in the instant case virtually holds that the policy was to provide indemnity to the insured against loss of his avocation by reason of impairment of his eyesight. Although it is a well settled rule that an insurance policy is to be construed most strongly against the insurer, yet the language in the instant case seems so clear as to need no construction. To hold that color-blindness is equivalent to the complete and permanent loss of sight of both eyes seems to be a flagrant disregard of the English language, and, in effect, to make a new contract for the parties.

For a discussion of the principles involving a construction of the term "confinement within the house," see 4 VA. LAW REV. 679.

PRINCIPAL AND AGENT—TRAVELING SALESMAN—CONDITIONS ATTACHED.—A traveling salesman, agent of the plaintiff, contracted with the defendant, trustee of a retail liquor business, for the sale of certain goods. It was agreed between the two that the purchaser was to be bound only in his representative capacity as trustee. The agent transmitted the order to his principal, but failed to append the conditions. The order was filled and the purchaser paid part of the purchase money therefor. The principal brought action against the trustee personally for the balance of the purchase price. *Held,* the defendant is not personally liable. *Rothchild Bros.* v. *Kennedy* (Or.), 169 Pac. 102.

In absence of a stipulation absolving him from personal liability, a trustee is bound personally on his contracts for the trust estate. *Hussey* v. *Arnold*, 185 Mass. 202, 70 N. E. 87; *Taylor* v. *Davis*, 110 U. S. 330. And this is so, even though the seller charged the goods to the trading name, and knew that the trustee was purchasing in his representative capacity. *Connally* v. *Lyons*, 82 Tex. 664, 27 Am. St. Rep. 935.

It is an undisputed principle of law that an agent acting within the apparent scope of his authority binds his principal on contracts made with third parties. But it becomes interesting to note the interpretation given by the courts to the apparent authority of agents. The majority decisions hold that, in absence of express authority, a traveling salesman has only authority to solicit orders and transmit them to his principal, and no power to consummate a sale. *L. A. Becker Co.* v. *Clardy*, 96 Miss. 301, 51 South. 211, 23 Am. & Eng. Ann. Cas. 355; *Nolin Milling Co.* v. *White Grocery Co.*, 168 Ky. 417, 182 S. W. 191. An agent who contracts to sell at a price below the list price, in absence of collusion between the agent and purchaser, binds his principal. *Furniture Co.* v. *Board of Education* (Ky.), 38 S. W. 864. However, it seems otherwise if the price is excessively below the list price, so as to put the customer on notice, that the contract is not within the scope of the agent's authority. *Charles Brown Grocery Co.* v. *Beckett* (Ky.), 57 S. W. 458. And an agent with general authority to sell goods cannot agree with the buyer that his principal will receive a quantity of old unsold stock in

part payment for new goods. *John Stember & Co.* v. *Keene* (Tex. Civ. App.), 152 S. W. 661.

Where there has been an alteration, or the memorandum forwarded does not state the conditions or terms of sale correctly, another aspect is presented. Such facts as those of the instant case seem seldom to have arisen. But the few times similar cases have arisen the courts have uniformly held like the instant one. Thus, a principal is bound by the terms of a contract to sell made by his agent, although these terms have been omitted or altered when the order is accepted by the principal. See *Patton-Worsham Drug Co.* v. *Stark* (Tex. Civ. App.), 89 S. W. 799. And in a very recent case the principal was bound by the conditions of sale made by an agent to solicit and forward orders, whether the conditions were attached when the order was received, or were detached by the agent before forwarding. *White Sewing Machine Co.* v. *Atkinson & Son*, 126 Ark. 204, 190 S. W. 111. It seems, on reason and authority, that the instant case is eminently sound.

WILLS—UNDUE INFLUENCE—BURDEN OF PROOF WHERE HUSBAND IS THE SCRIVENER OF THE WILL OF WHICH HE IS THE SOLE BENEFICIARY.—A husband and wife were living apart in order that he might secure more advantageous employment. There was no estrangement between them. The husband was recalled by the critical illness of his wife. At her request he wrote her will making himself sole beneficiary; which will was duly signed by the wife. Probate of the will was contested by the children. *Held,* the will is valid. *In re Spence's Estate* (Penn.), 102 Atl. 212.

Where a will is executed with the required formalities it is presumed to be a good will and the burden of proving undue influence is upon him who alleges such to be the fact. Undue influence to defeat a will must amount to a controlling mental restraint and coercion, destroying the free agency of the testator. *Wallen* v. *Wallen*, 107 Va. 131, 57 S. E. 596; *Coffman* v. *Hedrick*, 32 W. Va. 119, 9 S. E. 65; *Bulger* v. *Ross*, 98 Ala. 267, 12 South. 803. In some jurisdictions the proponent has the burden of proving that the will is the free and voluntary act of the testator. And undue influence does not shift the burden. But here the burden of proof is satisfied by introducing the will and the record of the probated will. *Sheehan* v. *Kearney*, 82 Miss. 688, 21 South. 41, 35 L. R. A. 102; *In re Holman's Estate*, 42 Or. 345, 70 Pac. 908.

The fact that a will is drawn by a legatee for his own benefit does not of itself raise a presumption of undue influence. It is merely a fact to be considered by the court along with other facts. In some cases it would have no weight at all. Thus, if it appear that the testator had testamentary capacity, that he dictated his will and knew its contents at the date of execution, and that it was executed in the statutory manner, the mere fact that the will was written by the sole beneficiary would not be enough, unless coupled with other extremely suspicious facts, to overthrow it, or, taken alone, to cast the slightest suspicion upon it. *Kirby* v. *Sellards*, 82 Kan. 291, 108 Pac. 73, 28 L. R. A. (N. S.) 270, 136 Am. St. Rep. 110, 20 Ann. Cas. 214. But where other suspicious circumstances are connected with such a fact there must be affirmative